

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**JANUARY 5, 2000**

**IN RE:**

**PETITION OF THE TENNESSEE SMALL  
LOCAL EXCHANGE COMPANY COALITION  
FOR TEMPORARY SUSPENSION OF 47 U.S.C.  
§ 251(b) AND 251(c) PURSUANT TO 47 U.S.C. §  
251(f) AND 47 U.S.C. § 253(b)**

**DOCKET NO. 99-00613**

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**ORDER GRANTING INTERVENTION PETITIONS OF US LEC OF  
TENNESSEE, INC., SOUTHEASTERN COMPETITIVE CARRIERS  
ASSOCIATION, HYPERION OF TENNESSEE, L.P. AND AT&T  
COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC. AND  
DENYING MOTION TO DISMISS OF SOUTHEASTERN COMPETITIVE  
CARRIERS ASSOCIATION**

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This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference held on October 26, 1999, upon the petitions for leave to intervene filed by US LEC of Tennessee, Inc. ("US LEC"), the Southeastern Competitive Carriers Association ("SECCA"), Hyperion of Tennessee, L.P. ("Hyperion"), and AT&T Communications of the South Central States, Inc. ("AT&T") and the Motion to Dismiss filed by SECCA.

The Petition of the Tennessee Small Local Exchange Coalition (the "Coalition") filed on August 18, 1999, requests that the Authority grant the members of the Coalition a temporary suspension of the requirements imposed under Sections 251(b)(1), (2), (4) and

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(5) and 251(c) of the federal Telecommunications Act of 1996, 47 U.S.C. § 251 (the “Act”). The Petition has been filed pursuant to Sections 251(f)(2) and 253(b) of the Act.<sup>1</sup>

On September 14, 1999, the Authority published notice to all interested parties to file comments to the Coalition’s Petition by September 29, 1999. Petitions to intervene were filed by US LEC and SECCA on September 15 and September 24, 1999, respectively. On September 29, 1999, the Authority received the following: Comments and Petition to Intervene filed by AT&T; Comments, Petition to Intervene and Proposed Order filed by Hyperion, and a Motion to Dismiss filed by SECCA. The Motion to Dismiss asserted that the members of the Coalition must seek suspension under Section 251 of the Act on an individual basis and accordingly, the Authority should dismiss the Petition and allow each petitioner to re-file separately. Further, SECCA argued that the Coalition must set forth company-specific facts or arguments in seeking relief under Section 251. On October 7, 1999, the Authority notified the Coalition to file a response or reply to the above-mentioned filings by October 15, 1999. The Coalition filed its responses to each of the filings on October 15, 1999.

At the October 26, 1999 Authority Conference, the Directors applied the legal standard for intervention, set forth at Tenn. Code Ann. § 4-5-310, and found that the

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<sup>1</sup> Section 251(b)(1), (2), (4) and (5) and (c) set forth specific duties for local exchange carriers (“LECs”), to wit: the duty to offer resale, number portability, access to rights-of-way, and reciprocal compensation requirements. Section 251(c) additionally imposes on incumbent LECs the duties of negotiation and to provide interconnection, unbundled access, resale, notice of changes, and collocation. The performance of these duties may be suspended under Section 251(f)(2) if a State commission determines that the suspension is necessary: (i) to avoid a significant adverse economic impact on users of telecommunications services generally; (ii) to avoid imposing a requirement that is unduly economically burdensome; or (iii) to avoid imposing a requirement that is technically infeasible. Section 253(b) provides that a state regulatory agency may impose, on a competitively neutral basis, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

intervention petitions: were timely and properly served; substantiated that legal interests of the intervenors may be determined in this matter; and demonstrated that the interest of justice and the orderly and prompt conduct of this matter would not be impaired by allowing such interventions. Without objection from the Petitioner, the Directors voted unanimously to grant the Petitions to Intervene. Further, the Directors considered the Motion to Dismiss filed by SECCA and found that the members of the Coalition were not required to seek suspension under Section 251 on an individual basis in separate actions before the Authority. Upon determining that there is no statutory requirement that the requests of the members of the Coalition be heard separately, the Authority concluded that the individual members must each meet the requirements of Section 251(f)(2), and each prove company-specific facts as to why the requested relief should be granted. For these reasons, the Directors voted unanimously to deny, without prejudice, the Motion to Dismiss.


The Directors also voted unanimously to appoint General Counsel or his designee to serve as the Pre-Hearing Officer for the purpose of preparing this matter for consideration by the Directors.

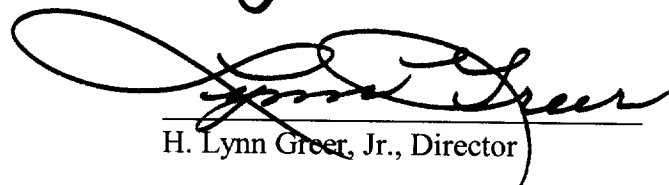
**IT IS THEREFORE ORDERED THAT:**

1. The Petitions to Intervene filed by US LEC, SECCA, Hyperion and AT&T are granted and petitioners are permitted to intervene and to participate in this proceeding as their interests may appear and to receive copies of any notices, orders or other documents herein;
2. The Motion to Dismiss filed by SECCA is denied without prejudice;

3. General Counsel of the Authority, or his designee, is hereby appointed to serve as Pre-Hearing Officer in this docket for the purpose of identifying issues, setting filing schedules, conducting status conferences and otherwise preparing this matter for consideration by the Directors; and

4. Any Party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days of the date of this Order.

  
Melvin J. Malone, Chairman

  
H. Lynn Greer, Jr., Director

  
Sara Kyle, Director

ATTEST:

  
K. David Waddell, Executive Secretary